

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

10 ANDREW KRAMER,) CASE NO. CV 16-1752-R (PJW)
11 Plaintiff,)
12 v.) ORDER DISMISSING ACTION FOR
13 LOS ANGELES COUNTY SHERIFF) FAILURE TO PROSECUTE
14 JIM MCDONNELL, ET. AL.,)
15 Defendants.)
16 _____)

17 Before the Court is a pro se civil rights action in which
18 Plaintiff, a prisoner at the Men's Central Jail in Los Angeles,
19 California, alleges that Defendants are mistreating him at the jail.
20 For the following reasons, the Complaint is denied and the action is
21 dismissed without prejudice.

22 Plaintiff contends, among other things, that Defendants
23 reclassified him without a hearing, denied him kosher meals, took away
24 his items of worship, prevented him from communicating with others,
25 and housed him in unsanitary conditions. (Compl. at ¶ 7.) Upon
26 screening the Complaint, it became clear that Plaintiff had not
27 exhausted his administrative remedies. As he points out in the

1 Complaint, he filed a grievance in February and, when he did not hear
2 back from jail officials in March, he filed suit. (Complaint at ¶ 8.)

3 On March 21, 2016, the Court issued an order to show cause,
4 requiring Plaintiff to inform the Court no later than April 25, 2016
5 whether he had exhausted his claims before filing suit. Plaintiff
6 failed to respond. The Court then issued a second order to show
7 cause, giving Plaintiff until June 6, 2016, to respond and warning
8 him that, if he failed to respond, his case would be dismissed.
9 Plaintiff has yet to respond to the Court's orders.

10 A district court has the authority to dismiss an action for
11 failure to prosecute and/or for failure to comply with its orders.
12 Fed. R. Civ. P. 41(b); *Link v. Wabash Railroad Co.*, 370 U.S. 626,
13 629-30 (1962) (explaining district court has authority to dismiss for
14 failure to prosecute to prevent undue delay in disposing of pending
15 cases and to avoid congestion in court's calendar); *Ferdik v.*
16 *Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992) (finding district courts
17 have authority to dismiss actions for failure to comply with any order
18 of the court). In determining whether dismissal is appropriate, the
19 Court considers five factors: (1) the public's interest in expeditious
20 resolution of litigation; (2) the court's need to manage its docket;
21 (3) the risk of prejudice to defendants; (4) the public policy
22 favoring disposition of cases on their merits; and (5) the
23 availability of less drastic sanctions. *Ferdik*, 963 F.2d 1258 at
24 1260-61.

25 In this case, the first two factors--the public's interest in
26 expeditious resolution of the case and the court's need to manage its
27 docket--weigh heavily in favor of dismissal. Plaintiff's refusal to
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1 comply with the Court's orders have caused this case to linger on the
2 docket.

3 As for the third factor--prejudice to the defendants--it appears
4 that Defendants have not yet been served so they may not even be aware
5 that they are being sued and probably have retained counsel to
6 represent them. However, there is still prejudice to them because, as
7 time goes by, memories of the events will likely begin to fade, which
8 could impair their ability to defend against the case in the future.

9 Although the fourth factor--the public policy in favor of
10 resolving cases on the merits--ordinarily weighs against dismissal for
11 failure to prosecute, it is Plaintiff's responsibility to move this
12 case along and he has elected not to. *Morris v. Morgan Stanley*, 942
13 F.2d 648, 652 (9th Cir. 1991).

14 Finally, as to the fifth factor--the availability of less drastic
15 alternatives--the Court has considered alternative sanctions but is
16 unable to conceive of a sanction that would encourage Plaintiff to
17 respond. It has already threatened Plaintiff with dismissal, but he
18 was unmoved. *Ferdik*, 963 F.2d at 1262 (citing *Malone v. U.S. Postal*
19 *Service*, 833 F.2d 128, 132-33 (9th Cir. 1987)) (explaining, warning a
20 plaintiff that failure to obey a court order will result in dismissal
21 of the case is enough to meet the "consideration of alternatives"
22 requirement). Further, because Plaintiff is incarcerated and
23 indigent, monetary sanctions would be fruitless.

24 Under these circumstances, dismissal is warranted. See *Link*, 370
25 U.S. at 629-30. As such, the action is dismissed without prejudice

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1 for failure to respond to the Court's orders to show cause and for
2 failure to prosecute.

3 IT IS SO ORDERED.

4 DATED: June 17, 2016



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6 HON. MANUEL L. REAL
7 UNITED STATES DISTRICT JUDGE
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Presented by:



PATRICK J. WALSH
UNITED STATES MAGISTRATE JUDGE